


Chairman Vincent C. Gray

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To adopt the findings, conclusions and recommendations of the Report of Investigation of the Special Counsel pursuant to Council Resolution 18-217, to formally censure Councilmember Marion Barry for the conduct referenced in that report that violated Council Rule 202, and to refer to the Office of Campaign Finance and United States Attorney for the District of Columbia the conclusions of the Special Counsel that Councilmember Barry violated District of Columbia laws and regulations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Censure of Councilmember Marion Barry and Enforcement Referral Resolution of 2010".

Sec. 2. (a) Since 1979, section 1801 of the District of Columbia Government Comprehensive Merit Personnel Act (D.C. Official Code § 1-618.01(a)), has provided that:

Each employee of the District government must at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering, or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

(b) Council Rule 202 and section 106 of the District of Columbia Campaign Finance and Conflict of Interest Act (D.C. Official Code § 1-1106), require any member who, in the discharge of his or her official duties on the Council, would be required to take an official action on a

matter as to which he or she has a conflict situation created by a financial or personal interest, to
disclose that information. The Council reaffirmed the applicability of these provisions and other
provisions of District and federal law to Members of the Council when it adopted a Code of
Conduct that requires Councilmembers to “maintain a high level of ethical conduct in connection
with the performance of their official duties” and to “refrain from taking, ordering or
participating in any official action that would adversely affect the confidence of the public in the
integrity of the District government.” Council Code of Official Conduct Rules Amendment
Resolution of 2009, effective September 22, 2009 (Res. 18-248; 56 DCR 7804).

(c) On July 4, 2009, Councilmember Marion Barry was arrested in an incident involving
Donna Watts-Brighthaupt. The charge was dismissed by the United States Attorney’s Office. It
was subsequently reported that Councilmember Barry and Ms. Watts-Brighthaupt were involved
in an intimate personal relationship and that Councilmember Barry had requested that Ms. Watts-
Brighthaupt be awarded a personal services contract from the Council, without disclosing that
relationship.

(d) It was further reported that Councilmember Barry had created nonprofit organizations
that he controlled for the purpose of receiving earmark grants from the Council using his office
and committee staff to prepare the organizing documents.

(e) In response to these allegations, on July 14, 2009, the Council, by a vote of 11 - 0,
with 2 members absent, authorized the Chairman to retain and delegate investigative duties to a
Special Counsel, Robert S. Bennett, to conduct an investigation into whether personal services
contracts awarded by the Council to Donna Watts-Brighthaupt were executed and administered
in compliance with District law and Council rules, policies, and procedures; to conduct a

thorough review of District laws and Council rules, policies, and procedures governing the issuance of contracts by the Council to independent contractors for the provision of services to individual members of the Council and grants awarded to organizations by the Council during the budget process; and to make recommendations for any necessary changes to District laws or Council rules, policies, and procedures. Council Contracts and Grants Investigation Authorization Resolution of 2009, effective July 14, 2009 (Res.18-217; 56 DCR 5892).

(f) The authorizing resolution was amended to appoint Amy R. Sabrin as Deputy Special Counsel “under the same terms as those applicable to the Special Counsel, and [to authorize her] to perform any duties of the Special Counsel that are delegated to her by the Special Counsel.” See, the Council Contracts and Grants Investigation Authorization Amendment Resolution of 2009, effective October 20, 2009 (Res. 18-286; 56 DCR 8557).

(g) The Special Counsel was authorized to subpoena documents and witnesses, and to examine any personal service contract or grant awarded by the Council, including any documents relating to the award. In conducting the investigation, the Special Counsel deposed 9 persons, interviewed more than 40 persons, and issued 49 document subpoenas. The Special Counsel was required to present a report to the Council within 45 days of the conclusion of the investigation.

Sec. 3. (a) On February 16, 2010, the Special Counsel presented his 107 page Report, including 40 Exhibits to the Council, entitled Report of Investigation Pursuant to Council Resolution 18-217, submitted by Special Counsel Robert S. Bennett, Hogan & Hartson LLP, and Deputy Special Counsel Amy R. Sabrin, Skadden, Arps, Slate, Meagher & Flom LLP, dated February 16, 2010 (“Report”). The Report contained findings of fact, which are set forth in greater detail in the Report, including:

(1) Mr. Barry arranged for a personal services contract to be awarded to Ms. Watts-Brighthaupt, with whom he had a sexual and close personal relationship. Ms. Watts-Brighthaupt was paid a total of \$15,000 pursuant to the contract. Report at 9.

(2) Mr. Barry sought to hire Ms. Watts-Brighthaupt to draft a proposal for a program entitled "Emerging Leaders of Ward Eight." *Id.*

(3) Significant portions of the initial Emerging Leaders deliverable prepared by Ms. Watts-Brighthaupt for Councilmember Barry were copied without attribution from publicly available materials located on the Internet. *Id.*

(4) Testimony and other evidence showed that Councilmember Barry sought approval for the contract after paying for certain expenses for Ms. Watts-Brighthaupt, and that he received a portion of the monies paid to Ms. Watts-Brighthaupt under the contract as repayment for funds he claimed to have loaned her. *Id.*

(5) At the behest of Mr. Barry, six councils in Ward Eight ("the Ward Eight Councils") were awarded a total of \$450,000 in earmark grants for fiscal year 2009. These entities principally performed citizen-services activities in the Ward represented by Mr. Barry. *Id.*, at 11

(6) The Ward Eight Councils were conceived by Councilmember Barry and implemented at his direction by Brenda Richardson, a long-time supporter who managed his Constituent Services Office ("CSO"). *Id.*, at 11

(7) A number of signatures on the Articles of Incorporation of the Ward Eight

Councils were falsified. *Id.*, at 12

(8) At Mr. Barry's direction, Rev. Anthony Motley drew on funds from the account of an entity known as the Marion Barry Scholarship Fund to pay the incorporation fees for the Ward Eight Councils. The money in that fund had been raised for the purpose of providing scholarships to students. *Id.*, at 12.

(9) Most of the Ward Eight Councils operated out of Councilmember Barry's Constituent Services Office before and after incorporation, and often held meetings in the conference room at that location. Councilmember Barry was involved in directing the activities of the Ward Eight Councils. *Id.*, at 53, 59.

(10) A handful of individuals close to Mr. Barry, and their friends and relatives, made tens of thousands of dollars from the Ward Eight Councils and other earmark grantees sponsored by Councilmember Barry. *Id.*, at 12.

(11) The Special Counsel found that Council Member Barry attempted to impede the investigation by refusing to answer material questions related to his conduct and by advising a material witness to withhold documents and information requested or subpoenaed by Special Counsel. *Id.*, at 13

(b) The Report of the Special Counsel included the following conclusions:

(1) Approval of the personal services contract to Donna Watts-Brighthaupt was not obtained in accordance with D.C. law or Council rules, policies, and procedures because the authorities responsible for approving such contracts were misled about its purpose and because Mr. Barry did not disclose his financial, personal, and sexual relationships with Ms. Watts-Brighthaupt.

- (2) Councilmember Barry received part of the contract proceeds from Ms. Watts-
Brighthaupt in payment for loans he claimed to have made to her. Report at 8-9.
- (3) Councilmember Barry had an undisclosed financial interest in Ms. Watts-
Brighthaupt's ability to repay him. He furthered that financial interest by taking official action to
award her a public contract which enabled her to repay him as she was otherwise unemployed
and had insufficient sources of income to pay her mortgage and other bills. Report at 39
- (4) Many of the grantee organizations to which Mr. Barry steered public funds
were rife with waste and abuse, and provided substantial financial benefits to some of his close
friends and supporters. These grants also effectively permitted Mr. Barry to circumvent laws and
regulations that restrict the nature and amount of funds that can be expended for citizen-service
programs.
- (5) Councilmember Barry violated D.C. Official Code § 1-618.01, and 18 DPM
§§ 1804.1(c) and 1806 by allegedly ordering employees on his Council Committee and office
staff to draft and file the incorporation documents for the Ward Eight Councils.
- (6) Councilmember Barry's conduct constituted a conflict of interest, violated the
public trust, and cast substantial doubt on the integrity of the District government in violation of
numerous District laws and regulations, and Council Rule 202.
- (7) There is substantial evidence that Mr. Barry engaged in conduct to impede the
Council's investigation. This conduct may implicate criminal laws respecting obstruction and
false testimony, and should be referred to appropriate authorities for investigation. Report at 93.
- (c) The Report of the Special Counsel contained the following recommendations
regarding the conduct of Councilmember Barry:

(1) That the Council enact a resolution expressing the Council's collective
condemnation of Mr. Barry's conduct;

(2) That the Council consider whether it would be appropriate to remove Mr.
Barry from his Council Committee Chairmanships or take other administrative action with regard
to his Committee appointments; and

(3) That the Council refer the matters referenced herein to the authorities charged
with investigating potential violations of criminal and civil laws, including the United States
Attorney's Office for the District of Columbia, the District of Columbia Office of Campaign
Finance, and other authorities as the Council deems appropriate.

Sec. 4. (a) Councilmember Barry has had a full and fair opportunity to respond to the
allegations and to the Special Counsel's Report which sets forth the facts upon which this
Resolution is based, and in fact did so.

(b) Councilmember Barry, on February 23, 2010, filed a response to the Special
Counsel's findings. That response stated that he "did not willfully violate any District law or
regulation, or Council Rule or policy." It further stated that he "did not use his public office for
personal gain." Barry Submission at 2.

(c) The Special Counsel filed a Supplemental Report Regarding Council of the District of
Columbia Contracts and Grants on March 1, 2010. In the Supplemental Report, the Special
Counsel stated that he found nothing in Councilmember Barry's Submission that "alters the
conclusion that Mr. Barry's conduct not only created an appearance of impropriety, but was in
fact improper. Supplemental Report at 1.

Sec. 5. Following the consideration of the Report of Investigation of the Special Counsel,

the response of Councilmember Barry, and the Supplemental Report of the Special Counsel, the Council adopts the findings and recommendations in the Report of Investigation Pursuant to Council Resolution 18-217, submitted by Special Counsel Robert S. Bennett, Hogan & Hartson LLP, and Deputy Special Counsel Amy R. Sabrin, Skadden, Arps, Slate, Meagher & Flom LLP, dated February 16, 2010, including the recommendations in section 3(c) of this resolution.

Sec. 6. To maintain the confidence of the public in the integrity of the legislative branch of government, the Council:

(1) Expresses its collective disapproval of the actions of Councilmember Marion Barry as detailed in the Report of the Special Counsel, and hereby censures Councilmember Marion Barry for committing acts found by the Special Counsel to be a violation of the standards embodied in Council Rule 202, for failure to disclose his financial, personal, and sexual relationship with Ms. Watts-Brighthaupt prior to the award of the personal service contracts;

(2) Recommends that Councilmember Barry be removed as Chairman of the Committee on Housing and Workforce Development and from membership on the Committee on Finance and Revenue for actions that adversely affect the confidence of the public in the integrity of the Council; and

(3) Refers to the Office of Campaign Finance and the United States Attorney for the District of Columbia the conclusions of the Special Counsel that Councilmember Barry violated the District of Columbia's Conflict of Interest Statute, Standards of Conduct, Constituent Services statute, and possibly criminal laws.

Sec. 7. The Council shall transmit a copy of this resolution to Councilmember Marion Barry, and a copy of this resolution and the Report of the Special Counsel to the Director of the

Office of Campaign Finance, and the United States Attorney for the District of Columbia. 1

Sec. 8. This resolution shall take effect immediately. 2